

## **CHAPTER 40-36 REVENUE BOND REFINANCING LAW**

**40-36-01. Short title.** This chapter may be cited as the Revenue Bond Refinancing Law.

**40-36-02. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Enterprise" means any work, undertaking, or project which the municipality is authorized to construct and from which the municipality has derived or may derive revenues and for the refinancing of which refunding bonds are issued under this chapter. "Enterprise" includes all improvements, betterments, extensions, and replacements of such work, undertaking, or project, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.
2. "Federal agency" includes the United States of America, the president of the United States, or any agency, instrumentality, or corporation of the United States of America which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States of America or which may be owned or controlled, directly or indirectly, by the United States of America.
3. "Holder of bonds", or "bondholder", or any similar term, means any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding bond or bonds which at the time shall be registered other than to bearer.
4. "Law" means any general statute of this state.
5. "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds from the sale thereof, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of an enterprise and payable solely from all or any part of the revenue thereof and including interest thereon in arrears or about to become due whether or not such interest is represented by coupons or interest certificates.
6. "Refunding bonds" means notes, bonds, certificates, or other obligations of a municipality issued pursuant to this chapter, or pursuant to any other law as supplemented by, or in conjunction with, this chapter.
7. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected in connection with, and all other income and receipts of whatever kind or character derived by the municipality from, the operation of any enterprise or arising from any enterprise.
8. Words importing the singular number shall include the plural number and vice versa in each case, and words importing persons shall include firms, corporations, and limited liability companies.

**40-36-03. Municipalities may refinance enterprise - Borrow money - Issue refunding bonds.** Any municipality may refinance any enterprise, and for such purpose it may borrow money and issue refunding bonds from time to time.

**40-36-04. Refunding bonds authorized by resolution - Adoption - Taking effect.** Refunding bonds shall be authorized by resolution of the governing body of a municipality. Such resolution may be adopted at a regular or special meeting, and at the same meeting at which it is introduced, by the affirmative vote of a majority of all of the members of the governing body, and

shall take effect immediately upon the adoption thereof. No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality.

**40-36-05. Provisions governing issuance of refunding bonds.** The resolution of the governing body authorizing the issuance of refunding bonds may provide:

1. Whether the bonds shall be in one or more series;
2. The date or dates which such bonds shall bear;
3. The time or times, not exceeding the period of usefulness of the enterprise as determined by the governing body in its discretion but not exceeding in any event forty years from their respective dates, when such bonds shall mature;
4. The rate or rates of interest which such bonds shall bear;
5. The denomination or denominations in which such bonds shall be issued;
6. The form, either coupon or registered, in which such bonds shall be issued;
7. Whether or not such bonds shall carry registration or conversion privileges, and what such privileges, if any, shall be;
8. The manner in which such bonds shall be executed;
9. The medium in which such bonds shall be payable;
10. The place or places where such bonds shall be payable;
11. The terms of redemption, if any, to which such bonds shall be subject, and the premium, if any, which will be paid in case of a redemption;
12. That such bonds may be declared or may become due before the maturity date thereof;
13. For the replacement of mutilated, destroyed, stolen, or lost bonds;
14. For the authentication of such bonds and the conditions, if any, to be complied with before authentication thereof; and
15. Such other terms and covenants, if any, which such bonds shall contain.

Notwithstanding the form or tenor of such bonds, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall be treated as negotiable instruments for all purposes.

**40-36-06. Validity of refunding bonds.** Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purposes, notwithstanding that before the delivery of the bonds any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery of the bonds. A resolution authorizing the issuance of refunding bonds may provide that any such bonds may contain a recital that such bonds are issued pursuant to this chapter, and any refunding bonds containing such recital under authority of any such resolution shall be deemed conclusively to be valid and to have been issued in conformity with the provisions of this chapter.

**40-36-07. Refunding bonds exempt from taxation - Exception.** Refunding bonds issued under the provisions of this chapter and the income therefrom shall be exempt from any taxes, except inheritance, estate, and transfer taxes.

**40-36-08. Provisions which may be inserted in resolution authorizing issuance of refunding bonds.** The governing body of any municipality, in addition to the other powers conferred by this chapter, may insert in any resolution authorizing the issuance of refunding bonds, such resolution to be a part of the contract with the holders of the refunding bonds, provisions relating to:

1. Limitations on the purpose to which the proceeds of the sale of any notes, bonds, or other obligations thereafter to be issued to finance the improving of the enterprise may be applied;
2. Limitations on the issuance and on the lien of other notes, bonds, or other obligations thereafter to be issued and secured by or made payable from the revenues of such enterprise to finance the improving of the enterprise;
3. Limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;
4. The amount and kind of insurance to be maintained on the enterprise and the use and disposition of insurance moneys;
5. The pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which thereafter may come into existence;
6. The covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which thereafter may come into existence;
7. Events of default and the terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
8. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations;
9. The vesting in a trustee or trustees of the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds; the powers and duties of such trustee or trustees, and the limitation of liabilities thereof;
10. The terms and conditions upon which the holders of the refunding bonds, or of any proportion or percentage of them, may enforce any covenants made under this chapter or any duties imposed thereby;
11. A procedure by which the terms of any resolution authorizing refunding bonds or of any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated and the amount of refunding bonds the holders of which must consent thereto, and the manner in which such consent may be given;
12. The execution of all instruments necessary or convenient in the exercise of the powers granted by this chapter or in the performance of the duties of the municipality and of the officers, agents, and employees thereof;
13. The refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law, whenever enacted and whenever the same may be in force, which may affect the duties or covenants of the

municipality in relation to the refunding bonds, the performance of such covenants or duties, or the lien of such refunding bonds;

14. The purchase out of any funds available therefor, including, but not limited to, the proceeds of the sale of refunding bonds, of any outstanding notes, bonds, or obligations, including, but not limited to, refunding bonds, and the price or prices at which and the manner in which such purchases may be made; and
15. Such other acts and things as may be necessary or convenient or desirable to secure the refunding bonds or which may tend to make such bonds more marketable.

Nothing in this section shall authorize any municipality to make any covenant, to perform any act, or to do anything which shall require the expenditure by the municipality in any manner or for any purpose of any funds other than revenues received or receivable from the enterprise.

**40-36-09. Refunding bonds secured by a lien upon revenues of enterprise - Pledging fixed amount as security.** Refunding bonds shall be special obligations of the issuing municipality and shall be payable from, and secured by a lien upon, the revenues of the enterprise as shall be described more fully in the resolution of the governing body authorizing the issuance of the refunding bonds. Having due regard to the cost of operation and maintenance of the enterprise and the amount or proportion, if any, of the revenues of the enterprise previously pledged, a municipality, by a resolution of its governing body, may pledge for the security of the refunding bonds a fixed amount without regard to any fixed proportion of the gross revenues of the enterprise.

**40-36-10. Additional security for refunding bonds - Contents of bonds with additional security.** As additional security for any issue of refunding bonds, or any part thereof, issued under this chapter, any municipality, by a resolution of its governing body, may confer upon the holders of the refunding bonds all rights, powers, and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds, or other obligations for the refinancing of which such refunding bonds shall have been issued, including, but not limited to, the preservation of the lien of such notes, bonds, or other obligations without extinguishment, impairment, or diminution thereof. If any municipality exercises the power conferred by this section, each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this section, and each note, bond, certificate, or other obligation of the municipality to be refinanced by such refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds and the interest thereon finally have been paid and discharged, but each such instrument shall be stamped to show that such note, bond, certificate, or other obligation has been refunded pursuant to this chapter.

**40-36-11. No priority in refunding bonds of same issue.** All refunding bonds of the same issue shall be secured equally and ratably, without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this chapter and the resolution authorizing the issuance of such refunding bonds.

**40-36-12. Refunding bonds not a debt of municipality - Refunding bond to recite fund from which payable.** Refunding bonds and the interest thereon shall not be a debt of the municipality nor a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality or upon any income, receipts, or revenues of the municipality other than such of the revenues of the enterprise as shall have been pledged to the payment thereof. Every refunding bond shall recite in substance that the bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same except from said revenues.

**40-36-13. Exchange or sale of refunding bonds.** Refunding bonds may be sold or exchanged in installments at different times, or an entire issue or series may be sold or

exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time, and such bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates, or other obligations to be refinanced thereby. If the governing body shall determine to:

1. Exchange any refunding bonds, such bonds may be exchanged privately for, and in payment and discharge of, any of the outstanding notes, bonds, or other obligations of the municipality issued to finance or to aid in financing the acquisition, construction, improvement, or refinancing of an enterprise. The refunding bonds may be exchanged for a like or a greater principal amount of such notes, bonds, or other obligations of the municipality. The principal amount of the refunding bonds, however, may exceed the principal amount of outstanding notes, bonds, or other obligations for which they are exchanged only to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due. The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if, and to the same extent that, interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.
2. Sell any refunding bonds, such bonds shall be sold at not less than ninety-eight percent of par at public or private sale in such manner and upon such terms as the governing body shall deem for the best interests of the municipality.
3. Exchange or sell any refunding bonds more than six months in advance of the date on which the bonds being refunded mature or are redeemable in accordance with their terms to reduce the debt service costs, extend or adjust maturities in relation to the revenues pledged for payment of the bonds, permit the more advantageous sale of additional bonds, or any other purpose deemed necessary or desirable by the governing body, then the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable and called for redemption, to an earlier prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable and called for redemption, at the earlier redemption date, and any premium required for redemption on such date; or in the case of a crossover refunding, must be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding bonds until the date the proceeds are applied to the payment or redemption of the bonds to be refunded. The governing body's resolution authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and may provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds. Moneys on hand in the sinking fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, or other legally available funds of the municipality may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

**40-36-14. Recourse to general fund to pay refunding bonds prohibited - Credit or taxing power not pledged to payment.** No recourse shall be had to the general fund of any municipality for the payment of refunding bonds or interest thereon, or any part thereof. The credit or taxing power of any municipality shall not be deemed to be pledged to the payment of refunding bonds.

**40-36-15. Municipalities may appoint fiscal agent - Make rules and regulations governing.** Any municipality, in connection with the issuance of refunding bonds, may appoint a fiscal agent, provide for his powers, duties, functions, and compensation, limit his liabilities, prescribe a method for his resignation, removal, merger, or consolidation, and provide for the appointment of a successor and the transfer of rights and properties to such successor fiscal agent.

**40-36-16. Duties of municipality and officers thereof.** In order that the payment of refunding bonds and interest thereon shall be secured adequately, any municipality issuing refunding bonds pursuant to this chapter, and the proper officers, agents, and employees thereof, shall:

1. Pay or cause to be paid punctually the principal of every refunding bond and the interest thereon on the date or dates, at the place or places, in the manner, and out of the funds, mentioned in such refunding bond and in the coupons thereto appertaining and in accordance with the resolution authorizing its issuance.
2. Operate the enterprise in an efficient and economical manner and establish, levy, maintain, and collect such fees, tolls, rentals, rates, and other charges in connection therewith as may be necessary or proper. Such fees, tolls, rates, rentals, and other charges shall be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
  - a. To pay all current expenses of operation and maintenance of such enterprise;
  - b. To pay the interest on and principal of the refunding bonds as the same shall become due and payable;
  - c. To comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and
  - d. To meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise.
3. Operate, maintain, preserve, and keep the enterprise and every part or parcel thereof, or cause the same to be operated, maintained, preserved, and kept in good repair, working order, and condition.
4. Preserve and protect the security of the refunding bonds and the rights of the holders thereof, and warrant and defend such rights against all claims and demands of all persons whomsoever.
5. Pay and discharge, or cause to be paid or discharged, any and all lawful claims for labor, materials, and supplies, which, if unpaid, might become by law a lien or charge upon the revenues, or any part thereof, superior to the lien of the refunding bonds or which might impair the security of the refunding bonds, all to the end that the priority and security of the refunding bonds shall be fully preserved and protected.
6. Hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of such bonds, and apply such revenues only as provided by the resolution authorizing the issuance of the refunding bonds, or, if such resolution

thereafter shall be modified in the manner provided therein or in this chapter, as provided in such resolution as modified.

7. Keep proper books of record and accounts of the enterprise, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof, and which, together with all other books and papers of the municipality, shall be subject at all times to the inspection of the holder or holders of not less than ten percent of the refunding bonds then outstanding or of his or their representatives duly authorized in writing.

None of the duties contained in this section shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenue received or receivable from the enterprise. The performance of the duties enumerated in this section shall be of the essence of the contract of the municipality with the bondholders at all times.

**40-36-17. General remedies of holders of refunding bonds - Receiver of enterprise.**

The holders of bonds issued under this chapter, or a trustee for such holders, may exercise any or all of the general remedies provided in section 40-35-15, subject, however, to the restrictions and limitations contained in that section. A receiver for an enterprise may be appointed for the reasons and in the manner prescribed in section 40-35-16 for the appointment of a receiver for an undertaking. Any receiver appointed for an enterprise shall have the powers and shall perform the duties prescribed in section 40-35-16 for the receiver of an undertaking. The termination of a receivership for an enterprise shall be governed by the provisions of section 40-35-18, and after the enterprise is surrendered to the municipality, the holder of refunding bonds, upon any subsequent default, may secure the appointment of a receiver as in the case of the original default. The receiver for an enterprise shall be subject to the continuing jurisdiction of the court and may be removed by the court as specified in section 40-35-19.

**40-36-18. Waiver of default or breach of duty or contract not to extend to subsequent default or breach of duty or contract.** No waiver of any default or breach of duty or contract, whether such waiver is by a holder of refunding bonds or by a trustee therefor, shall extend to or affect any subsequent default or breach of duty or contract, nor shall any such waiver impair any rights or remedies on the bonds. No delay or omission of any bondholder, or any trustee therefor, to exercise any right or power accruing upon any default shall impair any such right or power or constitute a waiver of any such default or an acquiescence therein. Every substantive right and remedy conferred upon the holders of refunding bonds may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action, or proceeding to enforce any right or to exercise any remedy shall be brought or taken and then discontinued or abandoned or shall be determined adversely to the holder of the refunding bonds or to any trustee therefor, then and in every such case, the municipality and such holder or such trustee shall be restored to their former positions, rights, and remedies as if no such suit, action, or proceeding had been brought or taken.

**40-36-19. Limitations on authorizations contained in chapter - Effect of chapter on bonds issued prior to March 12, 1937.** Nothing in this chapter shall be deemed in any way to:

1. Alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality, prior to March 12, 1937;
2. Authorize the municipality to alter the terms of any such agreements, or to impair, or to authorize the municipality to impair, the rights and remedies of any creditors of the municipality; or
3. To authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or a debt.

**40-36-20. Construction - Procedure in issuance of refunding bonds.** This chapter shall constitute full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts, or things by any governing body of any municipality, or of any board, officer, commission, department, agency, or instrumentality of the state or of any municipality shall be required to issue any refunding bonds or to do any act or perform anything under this chapter, except as may be prescribed herein. The powers conferred by this chapter shall be in addition and supplemental to, and the limitations imposed by this chapter shall not affect the powers conferred by, any other law of this state.